

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
SAGA COMMUNICATIONS OF)	
ILLINOIS, LLC)	
)	
Licensee of Station WTAX(AM)	)	Facility ID No. 9961
Springfield, Illinois	)	NAL/Acct. No. MB20031810059
	)	FRN: 0009269655
	)	File No. BR-20040802BDD
)	
Licensee of Station WIXY(FM),	)	Facility ID No. 58539
Champaign, Illinois	)	NAL/Acct. No. MB-20051810057
	)	FRN: 0009269655
	)	File No. BRH-20040802BHA
)	
Licensee of Station WLRW(FM)	)	Facility ID No. 58542
Champaign, Illinois	)	NAL/Acct. No. MB20051810056
	)	FRN: 0009269655
	)	File No. BRH-20040802BHX

MEMORANDUM OPINION AND ORDER

Adopted: April 14, 2011

Released: April 15, 2011

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. Saga Communications of Illinois, Inc. (“Saga”), licensee of the three captioned radio stations (“Stations”), filed Petitions for Reconsideration (“Petitions”) of the Forfeiture Orders¹ issued to Saga for its willful and repeated violation of Section 73.3526 of the Commission’s Rules (“Rules”)² by failing to properly maintain public inspection files at each of the three Stations. In this Memorandum Opinion and Order, we deny reconsideration in each of the three Petitions and affirm the forfeitures issued by the Media Bureau (“Bureau”) in the amount of three thousand dollars (\$3,000) per station to Saga.

¹ *Saga Communications of Illinois, Licensee of Station WTAX(AM)*, Forfeiture Order, 24 FCC Rcd 2479 (MB 2009); *Saga Communications of Illinois, Licensee of Station WIXY(FM)*, Forfeiture Order, 24 FCC Rcd 1301 (MB 2009); *Saga Communications of Illinois, Licensee of Station WLRW(FM)*, Forfeiture Order, 23 FCC Rcd 18041 (MB 2008) (“Forfeiture Orders”).

² 47 C.F.R. § 73.3526.

II. BACKGROUND

2. On August 2, 2004, Saga filed applications to renew the respective licenses of the three captioned Stations (“Applications”). Section III, Item 3, of the license renewal application form, FCC Form 303-S, requests that the licensee certify that the documentation required by Section 73.3526 of the Rules has been placed in the station’s public inspection file at the appropriate times. Saga indicated “No” to that certification, explaining in an Exhibit for each of the respective Stations’ Applications that the issues/programs lists for all of the year 1999 were missing from the public inspection file of Station WTAX(AM); additionally, both Station WIXY(FM) and Station WLRW(FM) were missing issues/programs lists in each of their respective public inspection files for the fourth quarter of 1998, the first three quarters of 1999, and the fourth quarter of 2000.³ Subsequently, Saga reconstructed the missing reports based on available but imprecise information and placed these reconstructions into the public files of each of the three captioned Stations.

3. On June 23, 2005, the Bureau issued Notices of Apparent Liability for Forfeiture (“NALs”),⁴ each in the amount of three thousand dollars (\$3,000), to Saga for its admitted public file violations at each of the Stations. In response, Saga filed separate but largely identical requests for cancellation of the proposed forfeitures (“Requests”) on July 25, 2005. The Bureau rejected the Requests in separate Forfeiture Orders. Saga then filed the subject Petitions.

4. In its respective Petitions, Saga repeats several arguments considered and rejected in the Forfeiture Orders, notably that the violations were neither willful⁵ nor repeated.⁶ Further, Saga argues that the forfeiture amount issued in these cases is inconsistent with or disproportionate to that issued in similar or more egregious cases.⁷

III. DISCUSSION

5. The Commission will consider a Petition for Reconsideration only when petitioner shows either a material error in the Commission’s original order or raises changed circumstances or unknown additional facts not known or existing at the time of petitioner’s last opportunity to present such matters.⁸ Saga has failed to meet this burden.

³ Station WTAX(AM) Application, Exhibit 11; Station WIXY(FM) Application, Exhibit 11; Station WLRW(FM) Application, Exhibit 11.

⁴ *Letter to Gary S. Smithwick, Esq. from Peter Doyle*, reference 1800B3-JWR (MB June 23, 2005) (WTAX(FM)); *Letter to Gary S. Smithwick, Esq. from Peter Doyle*, reference 1800B3-JWR (MB Jun. 23, 2005) (WIXY(FM)); *Letter to Gary S. Smithwick, Esq. from Peter Doyle*, reference 1800B3-JWR (MB Jun. 23, 2005). (WLRW(FM)).

⁵ WTAX(AM) Petition at 4-6; WIXY(FM) Petition at 5-7; WLRW(FM) Petition at 5-7.

⁶ WTAX(AM) Petition at 6-7; WIXY(FM) Petition at 7; WLRW(FM) Petition at 7.

⁷ WTAX(AM) Petition at 7-9; WIXY(FM) Petition at 8-9; WLRW(FM) Petition at 8-9.

⁸ *See* 47 C.F.R. § 1.106(c); *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff’d sum nom.*, *Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 387 U.S. 967 (1966); *National Association of Broadcasters*, Memorandum Opinion and Order, 18 FCC Rcd 24414, 24415 (2003).

6. Saga first suggests that, absent supporting federal precedent, the Commission may not enforce its “unsupportable view” that violations resulting from inadvertent error are “willful” violations of the Rules.⁹ We disagree. The Commission is entitled to rely on its own published precedent.¹⁰ We thus find that the Forfeiture Orders properly relied on Commission precedent in finding that violations resulting from inadvertent error or failure to become familiar with the Commission’s requirements are willful violations.¹¹ Accordingly, we find this argument to be meritless.

7. Without citing any supporting legal authority, Saga next argues that its public file violations were not repeated. This argument was considered and rejected in the Forfeiture Orders. As Saga does not raise any new information reflecting changed circumstances, does not present additional facts not known at the time of its Requests, and does not attempt to show anything more than a disagreement with the Commission’s finding on this point, we reject without further consideration this unsupported and repetitious argument.

8. Saga also argues that the forfeiture amount, for what it refers to as a “minor mistake” and “inadvertent omission,” is unreasonable and unjust when compared to the decision in *Logos Broadcasting Corp.*,¹² in which the Commission admonished a licensee for making false certifications in violation of Section 1.17 of the Rules. Saga, however, neglects to mention the reason for the Commission’s seemingly light treatment for what we agree is a serious Rule violation – that issuance of a forfeiture was barred by the statute of limitations.¹³ As such, the decision in *Logos* carries no persuasive weight.

9. Lastly, Saga reiterates arguments made in its Request that the imposition of a forfeiture for the violation is inconsistent with Commission precedent.¹⁴ We have previously

⁹ WTAX(AM) Petition at 4-6; WIXY(FM) Petition at 5-7; WLRW(FM) Petition at 5-7. Saga further cites *CBS Corp. v. FCC*, 535 F.3d 167 (3d Cir. 2008) in questioning the validity of the Commission’s consistent interpretations of the statutory “willfulness” standard in Section 312(f)(1) of the Act. The Supreme Court, however, vacated *CBS Corp.* on May 4, 2009, and remanded to the Third Circuit Court of Appeals. 129 S. Ct. 2176 (2009). The case, therefore, carries no persuasive value.

¹⁰ 47 C.F.R. § 0.445(e). Pursuant to Section 0.445(e) of the Rules, interpretations designed to have general applicability and legal effect that are published in the FCC Record “may be relied upon, used or cited as precedent by the Commission” in any manner.

¹¹ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (stating that “inadvertence ... is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance.”).

¹² *Letter to Dan Alpert, Esq.*, 23 FCC Rcd 10202 (MB 2008).

¹³ *Id.* at 10206.

¹⁴ Saga again cites two cases in which licensees were admonished for missing public file documents, and argues that it should receive a similar sanction. WIXY(FM) Petition at 8; WLRW(FM) Petition at 8, *citing Southern Entertainment Corporation*, Letter, 20 FCC Rcd 11957 (MB 2005), *rescinded on other grounds*, Letter, 20 FCC Rcd 12105 (MB 2005); *Emmis Television License Corp.*, Memorandum Opinion and Order, 19 FCC Rcd 22851 (EB 2004).

considered and rejected Saga's arguments on this point¹⁵ and will therefore not grant reconsideration "to debate matters upon which the Commission has already deliberated and spoken."¹⁶

IV. CONCLUSION

10. Accordingly, for the reasons discussed above, IT IS ORDERED, that the Petition for Reconsideration for Station WTAX(AM), Springfield, Illinois, filed by Saga Communications of Illinois, LLC, on March 30, 2009, IS DENIED.

11. IT IS FURTHER ORDERED, that the Petition for Reconsideration for Station WIXY(FM), Champaign, Illinois, filed by Saga Communications of Illinois, LLC, on March 6, 2009, IS DENIED.

12. IT IS ALSO ORDERED, that the Petition for Reconsideration for Station WLRW(FM), Champaign, Illinois, filed by Saga Communications of Illinois, LLC, on January 16, 2009, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

¹⁵ WTAX(AM) Forfeiture Order at 2481-82; WIXY(FM) Forfeiture Order at 1304; WLRW(FM) Forfeiture Order at 18044 (finding cited cases to be inapposite because those cases did not involve missing issues/programs lists but rather were situations where licensees had failed to include other documents in the stations' respective public files).

¹⁶ *WWIZ, Inc.*, 37 FCC at 686; *see also William L. Carroll*, 8 FCC Rcd 6279 (1993).